

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALEXANDER LOPEZ and LUCAS
LOPEZ, on behalf of themselves and all
others similarly situated,

MEMORANDUM AND ORDER
No. 13-CV-5050 (FB) (JO)

Plaintiffs,

-against-

YOSSI'S HEIMISHE BAKERY INC.,
YOSSI'S 18 CORP., YOSSI'S
BAKERY & SWEET SHOPPE INC.,
YOSSI'S 14 CORP., YOSSI'S 53
CORP., YOSSI'S 13 CORP., JACOB
EAGLE, and ESTER EAGLE,

Defendants.

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Appearances:

For the Plaintiff:

JOSEPH A. FITAPELLI, ESQ.
BRIAN S. SCHAFFER, ESQ.
FRANK J. MAZZAFERRO, ESQ.
Fitapelli & Schaffer, LLP
475 Park Avenue South, 12th Floor
New York, New York 10016

BLOCK, Senior District Judge:

On March 9, 2015, Magistrate Judge Orenstein issued a Report and Recommendation (“R&R”) concluding that plaintiffs had established their entitlement to a total of \$124,190.84 from defendants, but recommending that the Court deny their motion for a default judgment because they had failed to prove

proper service on any defendant. The Court adopted the R&R, but granted plaintiffs leave to renew their motion upon proof of proper service.

Plaintiffs filed sufficient proof of service on all defendants and, at the Court’s direction, re-served the R&R on July 28, 2015. To date, no objections have been filed.

The R&R advised that failure to object would “waive[] the right to appeal the district court’s order.” R&R at 24. Where clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court, however, will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

No error, plain or otherwise, appears on the face of the R&R. However, the Court must update the calculation of prejudgment interest to reflect the passage of time since the R&R was issued. Assuming judgment is entered on Monday, August 31, 2015, prejudgment interest totals \$13,945.71 for plaintiff Alexander

Lopez and \$4,934.05 for plaintiff Lucas Lopez.

Accordingly, the clerk shall enter judgment in accordance with the R&R—as updated by this memorandum and order—plus post-judgment interest. **SO**
ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
August 27, 2015